



IN REPLY TO:

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Montana State Office
5001 Southgate Drive, P.O. Box 36800
Billings, Montana 59107-6800
<http://www.mt.blm.gov/>



3400 (910)

February 8, 2002

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Dear Reader:

A copy of the environmental assessment (EA) for the transfer of Federal mineral rights in lands designated as Otter Creek Tracts 1, 2, and 3 to the State of Montana is provided for your review. This EA assesses the impacts of the compliance by the Secretary of the Interior with Section 503 of Public Law 105-83 regarding the transfer of mineral assets to the State of Montana.

We welcome your comments on this document. The Bureau of Land Management (BLM) is collecting comments on behalf of the Secretary of the Interior. Comments should be sent to BLM (920), 5001 Southgate Drive, Billings, Montana, 59102, and must be postmarked within 2 weeks of its publication in the Federal Register, and no later than February 27, 2002. We regret that as of February 8, 2002, we do not have internet capability. Therefore, this document is not posted on the internet and comments cannot be received through that medium.

Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (9:00 a.m. to 4:00 p.m.) Monday through Friday, except during holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such request will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Thank you for participating in the environmental process. If you have any questions, please contact me at (406) 896-5012.

Sincerely,

Mat Millenbach
State Director

1 Enclosure

DRAFT

Environmental Assessment

For

**Compliance with Section 503 of the Department of the
Interior and Related Agencies Appropriation Act of 1998
(Public Law 105-83)**

**Prepared
by the Bureau of Land Management
February 2002**

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Environmental Assessment
for
Compliance with Section 503 of the Department of the Interior
and Related Agencies Appropriation Act of 1998
Public Law 105-83

1. Introduction

Background

In November 1990, Crown Butte, Inc. submitted to the U.S. Forest Service its plan of operation to develop its New World gold mine near the northern boundary of Yellowstone National Park. The proposal, which was analyzed in an environmental impact statement, drew considerable public opposition. In August 1996, the Federal Government, Crown Butte, Inc., and a coalition of environmental groups agreed that Crown Butte, Inc. would abandon its plans to develop the New World mine in exchange for unspecified Federal assets. The State of Montana expressed concern that the agreement would have a significant adverse effect on its economy because much of the labor force for the proposed mine would have been Montana citizens. Following announcement of the agreement, the Federal Government, the State of Montana, and the Montana Congressional delegation initiated efforts to identify means of reducing the adverse economic effects of the agreement on the State. Several meetings were held in Montana in December 1996 and January and February 1997 as a part of the Montana Initiative to discuss the New World Mine Agreement and to identify an asset list for a proposed mineral exchange. The Northern Cheyenne Tribe participated in one of those meetings and the Northern Plains Resource Council (NPRC) in another and expressed concerns about the proposed transfer of the Otter Creek tracts. Congress later included in the 1998 Interior and Related Agencies Appropriations Act (Public Law 105-83) financial resources and instructions designed to eliminate the negative effects of the Agreement. P.L. 105-83 provided \$65 million to purchase the Crown Butte, Inc. holdings and authorized the transfer of \$10 million in Federal minerals rights in Montana or all Federal mineral rights in three tracts in the Otter Creek drainage basin to the State of Montana not later than January 1, 2001.

Section 503 of P.L. 105-83 provided the guidance for the compensation of the State of Montana.

(a) CONVEYANCE REQUIREMENT - Not later than January 1, 2001, but not prior to 180 days after the enactment of this Act, the Secretary of the Interior shall convey to the State of Montana, without consideration, all right, title, and interest of the United States in and to—

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- (1) \$10,000,000 in Federal mineral rights in the State of Montana agreed to by the Secretary of the Interior and the Governor of Montana through negotiations in accordance with subsection (b); or
- (2) all Federal mineral rights in the tracts in Montana depicted as Otter Creek number 1, 2, and 3 on the map entitled 'Ashland Map'.

(b) NEGOTIATIONS - The Secretary of the Interior shall promptly enter into negotiations with the Governor of Montana for purposes of subsection (a) (1) to determine and agree to mineral rights owned by the United States having a fair market value of \$10,000,000.

(c) FEDERAL LAW NOT APPLICABLE TO CONVEYANCE - Any conveyance under subsection (a) shall not be subject to the Mineral Leasing Act (30 U.S.C. 181 et seq.).

The Conference Report discussion associated with Section 503 of P.L. 105-83 indicates that because the Crown Butte/New World Mine acquisition preempted the normal National Environmental Policy Act (NEPA) and the State permitting process, these forums were not available to consider the significant impact of the acquisition on State revenues.

As a remedy, Congress provided that in the event that the Secretary and the Governor were not able to identify \$10 million of Federal mineral rights for conveyance to Montana, the Secretary would transfer Otter Creek tracts 1, 2, and 3 by January 1, 2001. Because negotiations between the Secretary and the Governor did not yield a mutually agreeable solution under Section 503(a)(1), the plain language of the statute requires the Secretary to transfer the Otter Creek tracts to the State of Montana. The statute is clear—either agreement would be reached by January 1, 2001, or all right, title and interest to the federal mineral rights to the Otter Creek Tracts 1,2, and 3 would be transferred to the State of Montana.

The Department is undertaking this analysis under NEPA although not required by law. The Department is doing this for several reasons. First, assuming arguendo, that the Secretary retains discretion to choose either of the original options provided by Congress and because the issue of transfer of mineral rights to the State of Montana has generated considerable public interest, this Environmental Assessment informs the decision maker and the public of any environmental impact from the proposed alternatives. Second, receiving comment on the Environmental Assessment also provides the Northern Cheyenne Tribe, the State of Montana, interested landowners, the public and other federal agencies an opportunity to comment on any concerns regarding the two alternatives.

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Purpose and Need for Action

The purpose and need for the proposed action is to comply with section 503(a) of P.L. 105-83. The law provides the Secretary of the Interior with no discretion regarding the transfer of Federal mineral rights to the State of Montana at this time. Negotiations between the Secretary and the Governor did not result in agreement prior to January 1, 2001. Thus, if any discretion is left to the Secretary, she may only choose between the two alternatives provided by Section 503(a) which are evaluated in this Environmental Assessment.

Compliance with the National Environmental Policy Act

This Environmental Assessment has been prepared consistent with the NEPA's procedures to analyze any impacts of compliance with P.L. 105-83 and to provide the public with an opportunity to comment on the Environmental Assessment.

Secretarial implementation of the Congressional directive to transfer all right, title and interest to Federal mineral rights to the State of Montana has no direct effect on the environment. The transfer simply changes the ownership of the mineral rights transferred under both alternatives. The Department understands that a goal of the State of Montana is to promote the development of transferred mineral rights to benefit its economy. If this possible future action is undertaken, it would produce reasonably foreseeable impacts that would be analyzed in the context of a future undertaking by the State of Montana. The Department does not attempt in this Environmental Assessment to analyze these impacts in detail because the timing and nature of any potential development operations are sufficiently speculative that a reasonably informed analysis could not be conducted.

Any development and production activities of these minerals would be regulated by appropriate State and Federal laws and regulations. A discussion of possible issues that might arise appears in Appendix A. Where such development should require a Federal approval or permit, the approving or permitting organization will determine whether its action requires the development of an environmental assessment or impact statement under NEPA. That analysis would be based upon plans and proposals that could be analyzed with greater certainty and precision than any speculative analysis that could be produced at this time. Furthermore, this action is limited to the mere conveyance of title and in no way forecloses future evaluation. Therefore, the Department's position regarding NEPA compliance at this point does not preclude a detailed analysis of future development proposals. Instead, it recognizes that the Department can make no truly informed assessment of future mineral development at this time and that engaging in such an effort with the paucity of information available would not serve the public interest.

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2. Proposed Action and Alternatives

Proposed Action

The proposed action is the conveyance to the State of Montana of approximately 7,623 acres of all right, title and interest to Federal mineral rights in the tracts in Montana depicted as the Otter Creek tracts on the map entitled 'Ashland Map' as provided in Section 503(a) of P.L. 105-83.

Alternative One

This alternative would transfer \$10,000,000 in Federal mineral rights to the State of Montana if agreed to by the Secretary of the Interior and the Governor of Montana through negotiations. These Federal mineral rights could be located anywhere within the State boundaries.

No Action Alternative

Under the no action alternative, the Secretary of the Interior would not exercise either of the two options in Section 503(a) of P.L. 105-83. In this case, however, the Department's selection of a no action alternative would not fulfill its statutory obligation created by P.L. 105-83.

3. Relationship of the Proposed Action to the Land Use Plan

The clear direction from Congress in P.L. 105-83 to transfer Federal mineral rights overrides any plan conformance consistency. Nevertheless, the proposed action is in conformance with decisions in the 1984 Powder River Resource Area Resource Management Plan (RMP), Record of Decision (ROD) and attendant Environmental Impact Statement (EIS). Decisions under the Coal section of the RMP provide that "coal exchanges will be considered by direction of legislation ..." (Powder River Resource Area RMP/Final EIS, 1984, page 19). These mineral disposal actions in the RMP are further described as being "considered on a case-by-case basis" as appropriate in serving the public interest. The Lands section of the RMP also states that "mineral exchanges and sales could be considered on an individual basis when in the public interest ..." (Powder River Resource Area RMP/Final EIS, 1984, page 27). The Congress, in this instance, made the public interest finding for the Department. These discretionary mineral estate disposal actions as described in the Lands section of the RMP are separate and distinct from the surface estate disposal and retention areas identified by the

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RMP. The Lands section of the RMP clearly indicates that these mineral estate disposal actions could be considered separately from the surface estate.

4. Affected Environment

This section provides a brief description of the natural resources, economic, and social conditions in the Otter Creek area and discusses the existing conditions as a baseline for the analysis of potential impacts of the proposed action. Because the location of alternative Federal mineral rights which might be transferred is speculative, a comparative discussion of alternative sites is not displayed. However, previous proposals by the Department included Federal mineral properties in Montana either in production or those which could be ready for production in the near future. These developments have been or would have been analyzed under a separate NEPA process. The affected environment for these properties would be identified in those NEPA documents.

Lands

The Otter Creek tracts are located within Powder River County in southeastern Montana, within the Otter Creek drainage, a tributary of the Tongue River, and are located approximately six air miles southeast of Ashland, Montana. The Otter Creek tracts also lie approximately four air miles of the east boundary of the Northern Cheyenne Indian Reservation and over forty air miles from the east boundary of the Crow Indian Reservation. The Otter Creek tracts encompass approximately 19,836 acres of which 7,623 acres (38 percent) is underlain with Federal mineral rights. Surface ownership within the tracts is approximately 82 percent private, 10 percent State of Montana and the remaining 8 percent is administered by the Bureau of Land Management (BLM). The Otter Creek tracts are not located within or adjacent to any Wilderness Study Area (WSA) or Area of Critical Environmental Concern (ACEC).

Approximately 7,623 acres of Federal mineral rights are located within the three tracts. These Federal mineral rights lie mostly under private surface ownership (6,026 acres), with 1,597 acres occurring under surface lands administered by the BLM. The private surface ownership includes 10 different landowners. Figure 1 provides a detailed view of the location of the Otter Creek tracts and of land ownership.

Three classes of mineral rights exist in the Otter Creek tracts: 1) all minerals, 2) coal and oil and gas, and 3) coal only. Nearly 72 percent of the Federal mineral right acres include rights for all minerals,

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while 28 percent include mineral rights for coal only. Federal mineral rights limited to coal, oil and gas occur on 40 acres. A legal description of the Otter Creek tracts is included in Appendix B. Table 1 provides a detailed breakdown of Federal mineral rights and surface status by tract for the three Otter Creek tracts.

Table 1. Federal Mineral Rights for the Otter Creek tracts.

	1. Total Acres	2. Non-Federal Surface Acres with Non-Federal Mineral Rights	3. Private Surface Acres with Federal Coal Rights	4. Private Surface Acres with Federal Coal, O&G Rights	5. Private Surface Acres with All Federal Mineral Rights	6. Total Private Surface Acres with Federal Mineral Rights (columns 3+4+5)	7. Federal Surface Acres with Federal Mineral Rights	8. Total Acres of Federal Mineral Rights (columns 6+7)
Tract #1	5,736	3,819	640	0	1,277	1,917	0	1,917
Tract #2	7,703	4,599	1,160	40	1,080	2,280	824	3,104
Tract #3	6,397	3,795	310	0	1,519	1,829	773	2,602
TOTALS	19,836	12,213	2,110	40	3,876	6,026	1,597	7,623

Air Quality and Climate

The climate of the area is classified as a semiarid cool steppe, where evaporation exceeds precipitation, with relatively short warm summers and longer cold winters. Prevailing winds occur from the southwest, but local wind conditions reflect channeling down the Otter Creek valley due to the adjacent terrain. Air quality conditions in the area are very good. Relatively low air pollutant concentrations are a result of limited industrial air pollution and favorable atmospheric dispersion. Site-specific air quality monitoring has not been conducted in the area. However, the lack of significant pollution sources probably means that existing air quality is in attainment with all ambient air quality standards. The area is designated as a Class II air quality area that would allow development activities to occur. The Northern Cheyenne Tribe has designated its lands to the west of the Otter Creek area as a Class I air quality area. The Crow Reservation further west is classified as a Class II area.

Cultural and Historical

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Cultural resources within the area represent human occupation throughout the prehistoric and historic periods. Site-specific inventories on the Otter Creek tracts have not been conducted. However, cultural resources relating to the prehistoric period in the general area consist of a wide variety of sites including; scatters of flaked and ground stone tools, hearths and other camp debris, wooden lodges and other evidence of domestic structures, rock shelters and caves, game traps and kill sites, and other features. Cultural resources associated with the historic period consist of homesteads, historic trails, Indian war period battle sites, ranch developments, and Native American sites representative of continuing occupation throughout historic times. No cultural resource-related ACEC have been designated by BLM in the Otter Creek area.

Geology and Minerals

The Otter Creek tracts are within the Missouri Plateau division of the Great Plains physiographic province. Most of the area consists of flat to gently rolling ridges or uplands. Erosion along the edges of the uplands has occasionally formed steep-sided gullies or coulees. A dendritic drainage pattern exists that flows generally south to east into Otter Creek. Elevations range from 3,040 feet to 3,420 feet above sea level. To the south of the Otter Creek tracts lies the Custer National Forest, which is very rugged, forest-covered highland. The Forest forms a divide between the Otter Creek and Tongue River watersheds.

The Powder River Basin, in which the Otter Creek tracts are located, produces small amounts of oil and very small amounts of conventional natural gas from shallow reservoirs. There are no oil and gas leases or production on the Otter Creek tracts.

Coal bed methane (CBM) gas is considered an unconventional hydrocarbon resource in the Powder River Basin, including the Otter Creek area. CBM is considered a prospective resource from the Fort Union Formation coal beds in the Otter Creek area.

Several coal seams underlay the Otter Creek area, however, only the Knobloch seam is present in sufficient thickness and at a surface-mineable depth. The Knobloch seam ranges from 59 to 72 feet in thickness within the Otter Creek tracts. If this coal were leased, the Federal government would receive a royalty from any coal production. The State of Montana would receive 50 percent of the royalty receipts from any leased federal coal.

Coal from the Knobloch seam is low-sulphur coal classified as Sub-bituminous C. Coal of this quality is desirable for the generation of electricity because of its low sulfur content. These coal resources are not currently leased. Development of the coal at this time is considered speculative because the Otter

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Creek area would require development of new infrastructure to support a mine. The time frame and economics associated with potential coal development of these properties is therefore highly uncertain.

Construction mineral materials are generally present in the area and include sand and gravel, scoria, common clay and crushed common stone. There are no existing BLM mineral material permits nor mining claims for locatable minerals on the Otter Creek tracts.

Hydrologic Resources

Surface water is the primary source of water for uses in the area. Generally water quality is good. Surface water flow varies with the season. The Otter Creek is a tributary of the Tongue River, which flows north-northeast into the Yellowstone River.

Otter Creek has been identified by the State of Montana as an "impaired waterbody" in need of water quality restoration. This designation is in response to the requirements of Section 303(d) of the Federal Clean Water Act. Water quality degradation results from agricultural uses, road and bridge construction, land development and natural sources.

Groundwater quality and quantity are variable with the primary water quality issue being salinity. The primary bedrock aquifers are the sandstones and coal beds of the Tertiary Fort Union Formation. Wells within the Fort Union Formation may produce as much as 40 gpm, but yields of 15 gpm are more typical. Water is generally suitable for livestock purposes but may not be suitable for irrigation. Total dissolved solids concentrations range from 500 to 5,000 mg/L.

Water rights in Montana are the subject of the Montana Water Use Act and water rights are being adjudicated on a watershed basis. The Tongue River watershed, including the Otter Creek watershed, has not yet been fully adjudicated. Of particular importance to residents in the area and adjacent landowners, including the Northern Cheyenne Tribe, is the protection of surface water and groundwater in the vicinity of coal mines and future potential coal bed methane development. The Crow Indian Reservation is generally located in the Bighorn River watershed further to the west and is not affected by surface water or groundwater issues in the lower Tongue River and Otter Creek watersheds.

Paleontological Resources

Fossil-bearing rock units underlie the Otter Creek area and include the Fort Union Formation. The fossil record from the Fort Union Formation contains evidence of ancient environments that include streamside swamps, bottomlands, and well-established river courses. Fill within ancient river channels

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contains fossils of fresh water clams and snails. Other units of the Fort Union Formation contain fossils of turtles, fish, reptiles, and mammals. There are no Federal/BLM designated paleontological ACEC or National Natural Landmarks for paleontological resources in the vicinity of the Otter Creek tracts.

Vegetation

The shrubland vegetative community is the dominant vegetation type in the Otter Creek area. This vegetation type is characterized by shrub covers greater than 15 percent and forest cover less than 10 percent. Important shrubs include several species of sagebrush and others such as bitterbrush, creeping juniper, greasewood, mountain mahogany, rabbitbrush, and shadscale. The shrub community is associated with a complex understory of grasses such as bluebunch wheatgrass, blue grama, Idaho fescue, needle and thread, and western wheatgrass. The adjacent upland forests of the Custer National Forest are predominately a ponderosa pine forest with a shrub understory. No federally listed threatened or endangered plant species have been identified in the Otter Creek area.

Wildlife

The diverse topography and vegetative communities in the area provide habitat for a wide variety of wildlife. Big game species common within the area include mule deer, elk, and white-tailed deer. Some of the more common predators include coyote, red fox, raccoon, badger and striped skunk. Black bear and mountain lion may also occur in the general area. Inventories indicate that more than 250 species of birds occur in the area. Approximate numbers of species include 32 waterfowl and related species; 33 shore and wading birds; 18 diurnal and 11 nocturnal raptors; 8 species of gallinaceous birds; 8 woodpeckers; and 137 songbirds, including many neotropical migrants. Otter Creek is not a designated fisheries management stream, although Otter Creek has a moderate fisheries resource value and approximately 20 fish species have been identified. Abundant and common fish species in the downstream section of the Tongue River include the shovelnose sturgeon, goldeye, common carp, emerald shiner, fathead minnow, flathead chub, longnose dace, river carpsucker, longnose sucker, white sucker, shorthead redhorse, channel catfish, stonecat, and sauger. Federally listed threatened, endangered and proposed for listing species that may be found in the Otter Creek area include the mountain plover, bald eagle, and black-footed ferret.

Socio-Economics

The population of Powder River County is largely rural. Longtime residents often want to see continued local control of the land without interference from outside agencies or groups. There are some differences in attitudes toward energy development in the area and tensions arise from the desire

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for new development to support the often stagnant rural economies and the concern that such development could harm the environment and the lifestyle qualities of the area.

A portion of the population in the area is also Native American. They generally want to preserve many elements of their heritage, express strong connections with the natural environment, and often do not wish to become homogenized into the non-Indian culture. At the same time, some tribal members wish to pursue the development of energy resources for their long-term social and economic benefit.

The population of Powder River County decreased from 2,090 in the 1990 census to 1,858 in the 2000 census, a 1.2 percent negative annual growth rate. This compares to a State of Montana average annual positive growth rate of 1.2 percent over the same period. Data on race and ethnicity from the 2000 U.S. Census indicates that the Powder River County population is 97.4 percent white, with a 1.8 percent Native American population. Rosebud County which is located west of the Otter Creek tracts, includes part of the Northern Cheyenne Reservation, and has a 32.4 percent Native American population. Bighorn County which is located further to the west of the Otter Creek tracts and includes part of the Northern Cheyenne Indian Reservation and the Crow Indian Reservation, has a 59.7 percent Native American population. The percentage of the population of Powder River County below the U.S. Census Bureau poverty threshold is 15.3 percent, while 26 percent of the tribal members of the Northern Cheyenne Tribe and 38 percent of the tribal members of the Crow Tribe who are employed are below U.S. Health and Human Services poverty levels.

Employment by sector of the industry for 1998 indicates that Powder River County is 33.8 percent farm employment, 37.9 percent non-farm employment, and 28.2 percent government employment (U.S. Department of Commerce). The per capita income for Powder River County in 1998 was \$16,314, only 76.8 percent of the average per capita income for the State of Montana (Bureau of Economic Analysis). The average unemployment rate in Powder River County increased from 2.4 percent in 1995 to 3.0 percent in 2000. However, surveys by the Bureau of Indian Affairs indicate that 71 percent of the Northern Cheyenne and 61 percent of the Crow Tribe labor force is unemployed.

Northern Cheyenne Reservation

The Northern Cheyenne Reservation lies west of the Otter Creek tracts and occupies about 445,000 acres in Big Horn and Rosebud Counties. The Tongue River forms the eastern boundary of the Reservation. Approximately 4,212 Northern Cheyenne live on or near the Reservation. The community of Ashland, Montana is the nearest community to the Otter Creek tracts and is located on the Tongue River adjacent to the Reservation. Approximately 500 tribal members live in Ashland. The current economy of the Reservation is primarily based on livestock production; individual tribal

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members own an estimated 12 to 15 thousand head of cattle. The Tribe has approximately 27,000 acres of reservation lands presently under cultivation, the vast majority of which is dryland farming (i.e., hay, wheat, barley, and small grains). In addition to agriculture, the Tribe has developed several secondary sources of income including construction, timber harvesting, small business, light manufacturing, and casino gaming. The Reservation provides dispersed outdoor recreation including hunting, fishing, hiking, horseback riding, and plant and berry gathering. Hunting on the Reservation by non-tribal members is not permitted.

Coal deposits from the Fort Union Formation, estimated at 16.3 billion tons, exist beneath the entire Reservation. Several coal leases on the Reservation were canceled in 1978 by Congress, at the request of the Tribe, to respond to concerns regarding the political, economic and environmental sovereignty of the Tribe. Since that time, the Northern Cheyenne have overseen their energy development cautiously. The Reservation does not have any known oil or gas fields. Hydrological resources on the Reservation consist of surface water flow from several rivers and their associated tributaries, and the production of groundwater from a variety of geologic formations. The Tongue River and Otter Creek watersheds lie adjacent to the Reservation and are of concern to the Tribe.

Indian Trust Assets (ITAs) are assets such as lands or minerals held in trust by the federal government on behalf of Indian tribes or individuals. The Department of the Interior has an obligation to protect Indian Trust Assets and to consider the anticipated effects on ITAs in planning, deciding, and implementing actions by the federal government. The ITAs identified for the Northern Cheyenne Tribe are the Tribe's Reservation lands. The Northern Cheyenne Tribe also has existing water rights held in trust by the United States. These water rights include both surface water and groundwater rights needed for the protection and development of the Reservation. The Northern Cheyenne have successfully negotiated a water rights compact with the State of Montana and own a significant amount of water in the Tongue River Basin, including a principal portion of the Tongue River Reservoir.

Crow Reservation

The Crow Reservation is located west of the Northern Cheyenne Reservation and is further removed from the Otter Creek tracts. The Crow Reservation boundary is common with the western boundary of the Northern Cheyenne Reservation and is located primarily within the Bighorn River watershed which is further west. No further description of the Crow Reservation resource values or trust assets is needed to address the issues associated with the Otter Creek tracts. However, the Crow Tribe could be affected by competition to its existing coal mine if coal was developed in the Otter Creek tracts.

5. Consequences of the Proposed Action and Alternatives

Impacts of the Proposed Action

Impacts of the title transfer of Federal mineral rights to the State of Montana are not by itself significant and will not result in direct or cumulative environmental effects. Indirect impacts are analyzed below. The action will not result in irreversible or irretrievable environmental impacts and will not set into motion further clearly identifiable events. This Environmental Assessment does not address future development of the mineral rights in detail. The former Secretary of the Interior expressed concern that transfer of the Otter Creek tracts would open up a rural area to industrial development, and holds the potential for environmental disruption and accompanying controversy. The State of Montana has indicated its expectation that these Otter Creek tracts would be developed. However, the time frame and economic conditions associated with any development of these properties is uncertain and speculative. Furthermore, mitigation measures or stipulations associated with future development are speculative at this point because no specific proposals for development have been identified. Applicable Federal and State laws would be followed prior to any future development of the mineral resources. (See Appendix C.) Further environmental analysis would be necessary for any authorizations required on Federally administered surface estate that remains in the area. To the extent possible issues from future leasing and development can be identified at this time, they are discussed in Appendix A. To the extent the Congressional direction affects other Federal actions currently under consideration, for example, the Montana Statewide Oil and Gas EIS and Amendment for the Powder River and Billings RMPs, the impacts of this transfer will be factored into those analyses.

Issues have been raised by various constituent groups regarding the potential conveyance of Federal mineral rights to the State of Montana in the Otter Creek tracts. Some of the issues have been conveyed through earlier meetings to discuss a proposed mineral exchange and through ongoing land use planning efforts in the Powder River Basin area. These issues are discussed below.

Concerns have been expressed by a variety of parties that transfer of the mineral rights from Federal to state ownership would reduce legal protection for both surface and subsurface resources. Table 2 illustrates a potential coal development project to demonstrate some of the regulatory differences between Federal and State ownership.

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Table 2. Coal Development Scenario

	Federal Coal Development	State Coal Development
NEPA Analysis	BLM - leasing; OSM ¹ - mine plan	MT ²
Tribal Consultation	BLM or OSM/Tribes/BIA ³	MT - only if Tribe is impacted
Cultural and Historic Resources	BLM or OSM/SHPO ⁴ (Tribe/BIA if there are Tribal sites)	MT/SHPO (Tribe/BIA if there are Tribal sites)
Threatened and Endangered Species Consultation	BLM/FWS ⁵	MT/FWS (BLM if its lands are affected)

¹Office of Surface Mining Reclamation and Enforcement

²Montana Regulatory Agency

³Bureau of Indian Affairs

⁴State Historic Preservation Officer

⁵U.S. Fish and Wildlife Service

	Federal Coal Development	State Coal Development
Clean Air	EPA ⁶ /MT	EPA/MT
Clean Water	EPA/MT	EPA/MT
Coal Mining Permit/Mine Plan Approval	BLM/OSM	MT/OSM (oversight)
Public Participation	Any Interested Party	Any Interested Party

This title transfer is limited to a change in the mineral estate ownership only and will not involve any change in surface ownership title. The impact analysis of the proposed action starts from the premise that transfer of title will not change the physical environment and any impacts resulting from the transfer of Federal mineral rights in the Otter Creek tracts will stem solely from the differing management authorities.

Lands

The transfer of the Federal mineral estate to the State of Montana will remove the Federal split estate management on approximately 6,026 acres of private land. A total of ten private surface land owners will be indirectly affected by this mineral estate transfer. However, the transfer will result in the retention of a split estate on approximately 1,597 acres of BLM surface administered lands that will now have State minerals. The change of title will not have an impact on surface owners. No on-the-ground changes will occur. If the mineral rights are developed in the future, appropriate State and Federal laws will apply.

Executive Order 3911 dated October 4, 1923 withdrew all BLM administered lands in Section 24, T. 4 S., R. 45 E., to provide a driveway and watering place for livestock grazing. Under the Constitution, Congress has plenary power over public lands. Withdrawals created by the Executive Branch only bind the Executive Branch and not Congress. Congress, in this instance, has directed the transfer of \$10,000,000 in Federal mineral rights or all Federal mineral rights in the Otter Creek tracts. This action by Congress overrides the existing withdrawal. Impacts from transferring title to the Federal mineral rights will not have a significant impact on the surface use. If future mineral development occurs, impacts to surface uses will be addressed then.

⁶Environmental Protection Agency

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Concern has been raised by the NPRC that the transfer of the Federal mineral rights in the Otter Creek tracts to the State of Montana could result in the construction of the Tongue River railroad, which subsequently could impact the agricultural economy, property values and cultural resources of the Tongue River Valley. Public Law 105-83 provides only for the transfer of the Federal mineral rights and does not automatically trigger lease development or ensure that particular roads or railroads will be used to transport any produced coal. It is speculative and beyond the scope of this Environmental Assessment to analyze possible site specific impacts that might result from some future possible action by the State. Any proposal to develop a railroad or other transportation route will be subject to compliance with all applicable Federal and State laws. For example, as a surface owner, the United States would have to analyze the impact of any requested right-of-way over Federal lands in compliance with such laws as the Endangered Species Act, National Historic Preservation Act, Federal Land Policy and Management Act and NEPA.

Concern has been raised by the NPRC that transferring the Federal mineral rights in the Otter Creek tracts to the State of Montana would deprive qualified surface owners of their rights under the Surface Mining Control and Reclamation Act of 1977. Surface owners are afforded the same rights under the Office of Surface Mining Reclamation and Enforcement program approved for the State of Montana. Public Law 105-83 is clear in directing the transfer of all right, title, and interest to the Federal mineral rights. This Environmental Assessment assumes any future coal development by the State of Montana will comply with applicable State and Federal Laws which provides an opportunity to address surface owner concerns.

Air Quality and Climate

No air quality and climate related-impacts will result from the proposed action.

Cultural and Historical

Transfer of the Federal mineral rights in the Otter Creek tracts to the State of Montana is not an "undertaking" as defined under the regulation implementing the National Historic Preservation Act. Furthermore, the transfer has no ability to degrade cultural resources, thus procedural compliance with the regulations implementing the National Historic Preservation Act (36 CFR 800.3(a)(1)) is not required. However, the State of Montana has responsibility to protect cultural and historical resources pursuant to the Montana Antiquities and Montana Human Skeletal and Burial Site Protection Acts. Transfer of Federal mineral rights to the State would not foreclose the requirement for compliance with the National Historic Preservation Act and would still require compliance for any authorization of Federal administered surface lands in the area.

Geology and Minerals

Questions have been raised by the NPRC about the economic viability of future mineral development associated with the Otter Creek tracts. Determining the viability of a tract relates to a number of factors such as coal quality, overburden stripping ratios, transportation systems, and other infrastructure requirements. At this time any future development proposals are speculative and thus make it difficult to ascertain viability. The State of Montana is firm in its desire for the transfer of the Federal mineral rights in the Otter Creek tracts and the State has requested the Secretary to transfer the tracts. The underlying premise is that they have sufficient value either on their own or in conjunction with other mineral estates to result in potential future development.

The transfer of Federal mineral rights to the State of Montana would result in the potential loss of Federal royalty receipts from any mineral development that may occur in the future. The lost Federal share of the royalty would represent 50 percent of the total royalty receipts.

The Powder River Resource Area RMP designated 2,238 acres of the Otter Creek tracts as unsuitable for coal development. Public Law 105-83 made no distinction in the suitability for coal development. The statutory language directs the transfer of Federal mineral rights for the Otter Creek tracts. How these resources will be affected, if at all, by possible future development is speculative and beyond the scope of this Environmental Assessment. However, State laws such as the Montana Strip and Underground Mine Reclamation Act factors in consideration of whether lands have exceptional, critical or unique characteristics. The Act defines these to include lands with scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural or recreational significance (Montana Code Annotated § 82-4-227(2)(d)).

Hydrologic Resources

No hydrologic resource related-impacts will result from the proposed action.

Paleontological Resources

No paleontological resource related-impacts will result from the proposed action.

Vegetation

No vegetation related-impacts will result from the proposed action.

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Wildlife

A Biological Assessment (Appendix D) prepared by the BLM concluded that the proposed action would have no effect on Federally listed species that may be found in the area. The species analyzed were the bald eagle, mountain plover and black-footed ferret.

In addition, concern has been expressed that the transfer of the Federal mineral rights in the Otter Creek tracts to the State of Montana could eliminate some of the legal protections afforded by the Endangered Species Act. The State of Montana is required to comply with Section 10(a) of the Endangered Species Act regarding any potential effects to threatened and endangered species, and compliance with Section 7 of the Endangered Species Act would still be required for any Federal actions associated with authorizations on Federally administered surface lands in the area.

Socio-Economics

The State of Montana expects economic benefits from the transfer of the Otter Creek tracts and the future development of the mineral resources. Anticipated benefits may include the creation of jobs, mineral royalty and bonus. If the coal resources of the Otter Creek tracts are not developed, mineral production would continue at other mines, leaving this mineral reserve untouched. Availability of the Federal coal is necessary to successful mineral development because of the checkerboard land ownership pattern.

In addition, the State believes that if the coal resources in the Otter Creek tracts are developed, the low-sulphur coal production would be abnegated to provide benefits throughout the country especially pertaining to efforts to meet the Clean Air Act goals. Several private surface owners have indicated their desire for the statutorily mandated transfer of the Federal mineral rights in the Otter Creek tracts and, in fact, have pursued a legal challenge to direct the Department to transfer the tracts. The case George Shy et al. v Clinton, was dismissed on ripeness grounds by the U.S. District Court for the District of Columbia.

Northern Cheyenne Concerns

The Northern Cheyenne Tribe expects adverse socio-economic and cultural impacts and has raised concerns regarding potential socio-economic and cultural impacts as a result of compliance with P.L. 105-83. In letters to the Department and in meetings with Departmental representatives, the Tribe has expressed its views that the Department has an obligation under its Federal trust responsibility to analyze the socio-economic and cultural impacts to the Tribe and develop mitigation measures in

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conjunction with the transfer of the Federal mineral rights in the Otter Creek tracts to the State of Montana. The Tribe also maintains that once Federal mineral rights are transferred, the Tribe's interests are no longer protected by statutory and regulatory provisions of the Federal Coal Leasing Act Amendments, 30 U.S.C. Sections 201 et seq., or the Federal trust responsibility, because the Department would no longer retain the authority to lease the minerals.

The Secretary met with Tribal Representatives and Senator Ben Nighthorse Campbell on August 1, 2001. Subsequently, senior representatives from the Department of the Interior also met with the Northern Cheyenne during August 2001 to discuss many issues including the potential transfer of the Federal mineral rights in the Otter Creek tracts.

The Otter Creek tracts are located about four miles east of the Northern Cheyenne Reservation (Figure 2). The conveyance of Federal mineral rights is merely a transfer of interest of land, and in itself, this transfer of ownership does not change existing or future land uses. Moreover, the lands at issue are not located within the Reservation. Because there are no proposed changes in land uses and the lands are not within the Reservation, the transfer of these mineral rights will not have an impact on Reservation lands and/or trust assets.

In addition, the statutory language in P.L. 105-83 is unambiguous and directs the transfer of all "right, title and interest" to the Federal mineral rights. This clear Congressional direction does not contemplate conditional transfer of the mineral rights and that is confirmed by the legislative history. As a consequence, this Environmental Assessment does not analyze a "mitigation" alternative (even assuming such alternative were warranted by the impacts), and it does not speculate about future development. It only addresses the transfer of Federal mineral ownership as directed by P.L. 105-83.

At the same time, the Department recognizes that, while outside the scope of this analysis, future development of the mineral rights may have potential impacts on the Tribe. In the 1990 final Supplement to the Powder River I Regional Coal Impact Statement (FSEIS), BLM considered the socio-economic and cultural impacts to the Northern Cheyenne and Crow Tribes from leasing and developing of coal resources in the vicinity of their reservations. The Draft and FSEIS addressed the economic, social and cultural impacts of Federal coal leasing on the Northern Cheyenne and Crow Tribes. Development of a portion of the Otter Creek tracts was specifically addressed as a proposed action in the DSEIS (Appendix B.11 of the DSEIS). Development of the portion of the Otter Creek tracts not incorporated in the DSEIS would have similar effects. The DSEIS indicated there would be effects upon employment, population, household income, tribal government, and expenditures on the Northern Cheyenne Reservation. This DSEIS addressed the potential for leasing and development of the coal resources and can be used as a probable indication of the foreseeable impacts which may need

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to be addressed if a future proposal for development is received by the State of Montana. And, while the State would have the authority to develop the minerals, to the extent future federal action is required, including relating to development of the tracts, some federal protections would continue to be in place.

Unlike a lease sale, the Department does not have discretion to require stipulations and other measures to mitigate impacts. In this instance, Congress directed the transfer of all right, title and interest to Federal mineral rights in Montana under either of the original two choices available to the Secretary. In short, Congress has “acted otherwise” in passing P.L. 105-83 to direct the transfer, without stipulations, of all right, title and interest to Federal mineral rights. Nonetheless, the Department has withheld action on the transfer of any Federal mineral rights to the State of Montana in order to support the discussions between the State of Montana and the Northern Cheyenne Tribe.

Given the potential impacts of future development of the minerals, and the Secretary’s inability to condition the transfer of the Federal minerals rights to the State of Montana pursuant to P.L. 105-83, the Department has encouraged discussions between the Tribe and the State of Montana and postponed compliance with the Congressional directive to allow those discussions to continue. As a result, the State of Montana and the Northern Cheyenne Tribe have been engaged in discussions regarding possible mitigation if there is any future development in the Otter Creek tracts. The Tribe has outlined its proposal in “Northern Cheyenne Tribe’s Proposal for Otter Creek Coal Mine and Powerplant Mitigation Measure.” Many of the Tribe’s concerns and proposals for mitigation were analyzed in the 1990 Regional Coal Supplemental EIS.

The Tribe is also concerned about protection of religious and cultural sites and the requirement for consultation with tribal entities under the National Historic Preservation Act and counterpart 36 C.F.R. 800 regulations. This concern is addressed above in the Cultural and Historic Resources section.

Impact of Alternative One

The transfer of \$10,000,000 in Federal mineral rights in Montana to the State of Montana through negotiations has unknown environmental impacts because no properties were mutually agreed upon. However, the Department’s proposal to transfer Federal mineral properties already in production or nearly ready for production would have been analyzed in the NEPA process associated with that already (or nearly) permitted activity. One example would be a Federal coal tract within the permit area of a producing mine. Transfer of a tract like this would have the benefit of producing a near-term revenue stream from an existing, permitted mining operation where all the necessary infrastructure is in place, continuing existing jobs at that particular operation. The environmental impacts of development

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would have already been described and mitigated. The transfer of \$10,000,000 in Federal mineral rights under these circumstances would have no direct or indirect environmental impacts because it is a title transfer as described in the proposed action. Attempts by the Secretary and the Governor to identify a mutually agreeable producing mine or mine nearly ready for production were not successful.

Impact of the No Action Alternative

The No Action Alternative has no direct impact to the human environment, but does not comply with P.L. 105-83. The lands would continue in their current ownership as described in the Affected Environment. There are no land, air quality and climate, cultural and historical, geology and minerals, hydrologic, paleontological, vegetation, wildlife, or socio-economics related impacts nor Northern Cheyenne concerns as a result of this alternative. However, as previously mandated, both the Governor and nearby surface owners object to this alternative.

Comparison of the Alternatives

There are more issues that could be identified for the Proposed Action than for Alternative One because negotiations between the State of Montana and the Department never resulted in an agreement that could fulfill the requirements for Alternative One. Impacts under Alternative One would have been analyzed in the NEPA analysis associated with the already (or nearly) permitted mineral operation. The nature and significance of impacts as a result of Alternative 1 would be displayed, analyzed and discussed under the NEPA analysis associated with that operation. Compliance with P.L. 105-83 under Alternative One would not be met since agreement between the Secretary and the Governor of Montana has not been reached by January 1, 2001, as required by the Act. The No Action Alternative would have no direct impact to the human environment, but does not fulfill the direction in P.L. 105-83. The impacts from the proposed action have no significant impact. The proposed action would fulfill the direction to the Department under P.L. 105-83.

Appendix A

Possible Issues of Future Mineral Development of the Otter Creek Tracts

This appendix provides a list of potential issues as possible effects of future mineral development of the Otter Creek Tracts by the State of Montana. The level of impacts associated with different types of mineral development are site specific and would vary significantly with the type of development and cannot be quantified at this time. This list does not attempt to identify all the issues associated with development of the mineral resources. It, in no way, negates any responsibility to comply with environmental or other laws.

Air Quality. Potential issues may include the variety of emissions emanating from development activities and their effects on the natural and human environments and on the Northern Cheyenne Indian Reservation's Class I airshed.

Cultural Resources. Potential issues may include disturbance of cultural resources, effects on the eligibility of cultural resource sites for placement on the National Register of Historical Places, and identification of cultural areas where development may be incompatible.

Geology and Minerals. Potential issues may include development of coal bed methane and its effect on the ability to recover coal resources, drainage of adjacent methane resources, and the effect of over-pumping on methane recover; the development of oil and gas resources and its effect on the ability to recover coal resources.

Hazardous Materials and Waste Management. Potential issues may include the generation, storage and transport of hazardous materials during mineral recovery operations.

Water. Potential issues may include the impacts to groundwater and surface water quality from the development.

Indian Trust Resources and Native American Concerns. Potential issues may include protection of Indian trust assets, water quality, Class I airshed, impacts on culturally important sites, increased use of Reservation resources, and socio-economic impacts to tribal members.

Lands and Realty. Potential issues may include the construction effects, infrastructure needs for the development, reclamation, and surface owner concerns.

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Livestock Grazing. Potential issues may include impacts from water quality to livestock grazing and ranching operations, grazing land displacement, and vegetation changes to non-palatable plants.

Paleontological Resources. Potential issues may include vandalism and unauthorized collecting.

Recreation. Potential issues may include effects on recreational activities and huntable wildlife.

Social and Economic Values. Potential issues may include noise, property value impacts, agricultural job loss, social service impacts, local economy effects, and agricultural productivity.

Environmental Justice. Potential issues may include the disproportionate distribution of adverse impacts of any mineral recovery operations on minority and low income populations.

Soils. Potential issues may include erosion, loss of productivity, contour and land subsidence.

Vegetation. Potential issues may include reclamation management, exotic plant and noxious weed infestations, loss of plant productivity, and grassland protection.

Special Status Species. Potential issues may include loss of threatened and endangered species and mitigation/avoidance measures to protect these species.

Visual Resource Management. Potential issues may include visual degradation and visual pollution.

Wildlife. Potential issues may include fragmentation of habitat, impacts on habitat, effects of water quality and quantity, vehicle hazards, and migration interruption.

Most of these environmental consequences would also result from mineral recovery (coal, oil and gas, or coal bed methane) operations at other sites in Montana. The list above is specific to the Otter Creek tracts because the State of Montana has consistently identified those tracts as its preferred alternative. If an alternative site, some distance from the Northern Cheyenne Reservation, were to become acceptable to the State, immediate impacts on the Northern Cheyenne might be lessened or eliminated, but the trust interests of other tribes might be affected. Because the Department has no indication that an alternative site would be available and acceptable to the State of Montana, its analysis and comparison of potential environmental impacts is very limited.

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Appendix B

Legal Description

Otter Creek Tract No. 1:

Coal Only (640.00 acres) -

Principal Meridian, Montana

T. 3 S., R. 45 E.,
sec. 26: N $\frac{1}{2}$;
T. 4 S., R. 45 E.,
sec. 2: S $\frac{1}{2}$.

All Minerals (1,277.48 acres) -

Principal Meridian, Montana

T. 3 S., R. 45 E.,
sec. 26: S $\frac{1}{2}$;
sec. 34: all;
T. 4 S., R. 45 E.,
sec. 2: lots 1 through 4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$.

Otter Creek Tract No. 2:

Coal Only (1,160.00 acres) -

Principal Meridian, Montana

T. 4 S., R. 45 E.,
sec. 10: NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
sec. 12: N $\frac{1}{2}$;
sec. 22: E $\frac{1}{2}$ SW $\frac{1}{4}$;
sec. 26: N $\frac{1}{2}$.

Coal and Oil & Gas Only (40.00 acres) -

Principal Meridian, Montana

T. 4 S., R. 45 E.,
sec. 10: NE $\frac{1}{4}$ SE $\frac{1}{4}$.

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All Minerals (1,903.73 acres) -

Principal Meridian, Montana

T. 4 S., R. 45 E.,

sec. 12: S $\frac{1}{2}$;

sec. 14: lots 1 through 8, inclusive, and W $\frac{1}{2}$;

sec. 22: N $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$;

sec. 24: lots 1 through 8, inclusive, W $\frac{1}{2}$ E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$.

sec. 26: S $\frac{1}{2}$.

Otter Creek Tract No. 3:

Coal Only (310.04 acres) -

Principal Meridian, Montana

T. 4 S., R. 45 E.,

sec. 8: lots 1 through 4, inclusive, lots 6 and 7, N $\frac{1}{2}$ NE $\frac{1}{4}$, and
SW $\frac{1}{4}$ NE $\frac{1}{4}$.

All Minerals (2,292.37 acres) -

Principal Meridian, Montana

T. 4 S., R. 45 E.,

sec. 6: lots 6 through 17, inclusive, and SE $\frac{1}{4}$;

sec. 8: lots 5 and 8, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$;

sec. 18: all;

sec. 20: lots 1 through 4, inclusive, E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$;

sec. 22: W $\frac{1}{2}$ W $\frac{1}{2}$.

Aggregating 2,110.00 coal only acres; 40.00 coal and oil & gas only acres; and 5,473.58 all minerals acres.

Appendix C

The following laws may apply if all the Federal mineral rights in the Otter Creek tracts are transferred to the State of Montana. This is not intended to be an exhaustive list but is intended to provide a list of significant laws.

Montana Sources of Law

1. The right to a clean and healthful environment. Art. II Section 3 1972 Montana Constitution;
2. The protection of cultural resources. Art II, Section 4 of the 1972 Montana Constitution;
3. The Montana Environmental Policy Act, Sects 75-1-201, et seq., MCA;
4. Montana Natural Areas Act, Section 76-12-103, MCA;
5. Montana multiple-use land management mandate, Section 77-1-203, MCA;
6. Montana Antiquities Act, Section 22-3-224, MCA;
7. Montana Human Skeletal Remains and Burial Site Protection Act, Section 22-3-801, et seq., MCA;
8. Montana Repatriation of Human Remains and Funerary Objects Act, Section 22-3-901, et seq.;
9. The Clean Air Act of Montana, Sections 75-2-101, et seq., MCA;
10. Montana's Clean Water, Sections 75-5-101, et seq., MCA;
11. Montana Strip and Underground Mine Reclamation Act, Sections 82-4-201, et seq., MCA;
12. Montana Metal Mine Reclamation Action, Sections 82-4-301, et seq., MCA;
13. Montana Opencut Mining Act, Sections 82-4-401, et seq., MCA;

Federal Sources of Law

14. U.S. Constitution, Enclave Clause (Art. I, Section 8, Clause 17), Property Clause (Art. 1, Section 3, Clause 2), Commerce Clause (Art. I, Section 8, Clause 3), Supremacy Clause (Art. VI, Clause 2);
15. Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 331-1340;
16. Endangered Species Act, 16 U.S.C. §§ 1531-1544, Section 9 of the Endangered Species Act, 16 U.S.C. § 1538(a)(1) imposes the duty to avoid "taking" a threatened or endangered species;
17. Wild and Scenic Rivers Act of 1964, 16 U.S.C. Section 1274;
18. National Wilderness Preservation System Act, 16 U.S.S. Section 1131;
19. Federal Land Policy and Management Act of 1976, 43 U.S.C. Sections 1701-1784;
20. National Forest Management Act of 1976, 16 U.S.C. Section 1601-1614;

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21. National Environmental Policy Act, 42 U.S.C. 4321 et seq.;
22. National Historic Preservation Act of 1966, 16 U.S.C. 470;
23. Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666;
24. Clean Air Act of 1990, 42 U.S.C. §§ 7401-7671q;
25. Clean Water Act of 1987, 33 U.S.C. 1251- 1376;
26. Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201-1328;
27. Noxious Weed Act of 1974, 7 U.S.C. 2814;
28. Antiquities Act of 1906, 16 U.S.C. et seq.;
29. Historical Sites Act, 16 U.S.C. 461.

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Appendix D Biological Assessment

Project Description

The Otter Creek tracts are located within the Tongue River drainage in southeastern Montana, approximately ten air miles southeast of Ashland, Montana. The Otter Creek tracts lie within ten air miles east of the eastern boundary of the Northern Cheyenne Indian Reservation. The Otter Creek tracts encompass some 19,836 acres of which 7,623 acres (38 percent) is underlain by Federal mineral rights. The extent of the Federal mineral rights vary and include rights for coal; rights for coal, oil and gas; and rights for all minerals.

This Biological Assessment (BA) was compiled to consider the potential impacts on Federally listed and proposed threatened and endangered (T & E) species as a result of this action.

This BA is being prepared pursuant to Section 7(c) of the Endangered Species Act (ESA) of 1973, as amended. The U.S. Fish and Wildlife Service (FWS) is required under ESA to provide a list of federal endangered, threatened and proposed T & E species that may be present in the project area. A request for a species list to FWS was not pursued. In lieu of this deviation from normal procedures, the overall comments and species list received from FWS that addresses the ongoing "Montana Statewide Oil & Gas EIS" (MOGEIS) is being substituted. The area encompassed by the Otter Creek number 1, 2, and 3 are within the analysis area included in the MOGEIS.

Table 1 identifies Federally listed threatened, endangered and proposed for listing species that may be found in the project area.

TABLE 1

COMMON NAME	SCIENTIFIC NAME	HABITAT in MT	FEDERAL STATUS
Mountain Plover	Charadrius Montanus	shortgrass, Eastern Montana	PT
Bald Eagle	Haliaeetus	Forested Riparian	T

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Black Footed Ferret

Mustela Nigripes

Prairie Dog
Complexes in
Eastern Montana

E

The analysis presented in this document is limited in scope. The analysis pertains only to the action of transferring all rights, title and interest in Federal mineral rights to the State of Montana and does not attempt to address potential issues or present analysis of potential effects associated with actual potential future development of those mineral rights.

Data Collection:

No specific surveys were conducted for this BA. Appropriate federal and state agencies personnel were consulted. Literature was reviewed for existing site-specific or regional data.

Project Conditions:

This section discusses habitat requirements and distributions of species listed or proposed for listing by FWS, the status of the species potential impacts from project implementation, and an impact determination.

Mountain Plover:

This bird's habitat is grasslands and is associated with areas disturbed by heavy grazing, burning, and burrowing rodents. It does not over winter in Montana, but potentially may breed within the project area, particularly if black-tailed prairie dog towns are present.

There will be no surface impacts as a result of this action, therefore it will result in "No effect" to Mountain Plover.

Bald Eagle

There are no active bald eagle nesting territories within the project area. However, they do nest along the nearby Tongue River within 20 miles of the analysis area. The Tongue River and major tributaries (i.e., Otter Creek) provide important migration and winter habitat.

Because there are no surface impacts as a result of this action, there will be a "No effect" to bald eagles.

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Black-footed Ferret:

Black-footed ferrets are always found in association with the prairie dog, which are common within the project area. However, the only known populations of black footed ferrets are those resulting from re-introduction activities north of the Missouri River in Phillips and Blaine Counties.

There are no surface impacts associated with the proposed action, therefore there will be a "no Effect" to black-footed ferrets or their habitat.

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Bibliography

Montana Department of Labor and Industry, Research and Analysis Bureau, Local Area
Unemployment Statistic.

2001a. Information for 1990 and 2000. <http://rad.dli.state.mt.us/employ/aa90lf.htm>. <April 11, 2001>.

U.S. Bureau of Indian Affairs.

1999. Indian Labor Force Report, 1999. U.S. Department of the Interior, Bureau of Indian Affairs, Office of Tribal Services.

U.S. Bureau of Land Management

1984 Powder River Resource Area Resource Management Plan Draft and Final EIS. U.S. Department of the Interior. Bureau of Land Management, Miles City District Office.

U.S. Bureau of Land Management.

1989. Powder River I regional draft EIS, economic, social, and cultural supplement. U.S. Department of the Interior, Bureau of Land Management, Miles City District Office.

U.S. Census Bureau.

1990. Household and housing unit estimates.
<http://census.gov/population/www/estimates/housing.html>. <March 21, 2001>.

U.S. Census Bureau.

2001. Census 2000 redistricting data (Public Law 94-171) summary file, matrices PL1 and PL2. <http://www.census.gov>. <March 21, 2001>.

U.S. Department of Commerce, BEA.

2001. U.S. Department of Commerce, Bureau of Economic Analysis, 2001.
<http://ceic.commerce.state.mt.us/Economic/BEA/CountyREIS/index.htm>. <March 21, 2001>.

Otter Creek Area Coal Tracts

Tract #1

Tract #3

Tract #2

T 3 S

T 4 S

R 46 E

LEGEND



Tracts
Section Lines
Streams

SURFACE OWNERSHIP



BLM
USFS
State
Private
Federal Coal






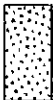



MONTANA



MONTANA INITIATIVE COAL TRACTS

LEGEND

-  Private Land
-  Public Lands
(Adm. by BLM)
-  National Forest
-  Indian Lands
or Reservations
-  State Lands
-  Federal Coal
-  Proposed Exchange
Tracts

Scale 1:175,000

No Warranty is made by the BLM as to the accuracy, reliability, or completeness of this data for individual use or aggregate use with other data.

